IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1966

NO. 19

HARRIETT LOUISE ADDERLEY, TIMOTHY BENJAMIN, JESSEY EVANS BLUE, ELIJAH BRADSHAW, MARY DELL BRADLEY, JUANITA ANNE CARRUTHERS, GALE SYLVIA CHRISTOPHER, GERALDINE FIELDS, CONSEIVILLAIE GOODSON, RUBIN EUGENE HOWARD, GEROLIN HICKS, RAYMOND W. JAMES, CORRINE JOHNSON, NELLIE MAE JOHNSON, CAROLYN YVONNE JOHNSON, RICHARD SIMPSON JONES, III, MABEL ELIZABETH LENON, SAMUEL OTIS MACKEY, COUNCIL MILLER, JR., PATRICIA A. MAYS, JACQUELYN GRACE MILLER, ROBERT THOMAS MOSES, HELEN MADDOX McGHEE, HARRIS EDWARD JOHN PERRY, CHARLES KENNETH ROGERS, JUNE DELORES RAINEY, JAMES LAWRENCE SHEPPARD, VIVILORIA JEAN THOMPSON, TOMMIE JEAN WRIGHT, WILLIAM B. WILCOX, NORMA ALFREDA WALLS,

Petitioners,

—vs

THE STATE OF FLORIDA,

Respondent.

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, STATE OF FLORIDA

BRIEF OF RESPONDENT

EARL FAIRCLOTH
Attorney General
WILLIAM D. ROTH
Assistant Attorney General
Counsel for Respondent

TABLE OF CONTENTS

TABLE OF CITATIONS

TEXT AND OTHER AUTHORITIES

STATUTES:

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1966

NO. 19

HARRIETT LOUISE ADDERLEY, TIMOTHY BENJAMIN, JESSEY EVANS BLUE, ELIJAH BRADSHAW, MARY DELL BRADLEY, JUANITA ANNE CARRUTHERS, GALE SYLVIA CHRISTOPHER, GERALDINE FIELDS, CONSEIVILLAIE GOODSON, RUBIN EUGENE HOWARD, GEROLIN HICKS, RAYMOND W. JAMES, CORRINE JOHNSON, NELLIE MAE JOHNSON, CAROLYN YVONNE JOHNSON, RICHARD SIMPSON JONES, III, MABEL ELIZABETH LENON, SAMUEL OTIS MACKEY, COUNCIL MILLER, JR., PATRICIA A. MAYS, JACQUELYN GRACE MILLER, ROBERT THOMAS MOSES, HELEN MADDOX McGHEE, HARRIS EDWARD JOHN PERRY, CHARLES KENNETH ROGERS, JUNE DELORES RAINEY, JAMES LAWRENCE SHEPPARD, VIVILORIA JEAN THOMPSON, TOMMIE JEAN WRIGHT, WILLIAM B. WILCOX, NORMA ALFREDA WALLS,

Petitioners,

—vs

THE STATE OF FLORIDA,

Respondent.

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, STATE OF FLORIDA

BRIEF OF RESPONDENT

INTRODUCTION

Respondent adopts the same symbols as expressed in petitioners' brief for reference to the record in this cause.

OPINION BELOW

Respondent concedes that the pertinent opinion herein sought to be reviewed is that found in 175 So.2d 249, and that such opinion is accurately duplicated in the appendix of petitioners' petition.

QUESTION PRESENTED

WHETHER SECTION 821.18, FLORIDA STATUTES, BY VIRTUE OF ITS APPLICATION TO PETITIONERS IN THIS CASE, CONSTITUTES A VIOLATION OF FREE SPEECH, ASSEMBLY, PETITION, DUE PROCESS OF LAW AND EQUAL PROTECTION OF THE LAWS ASSURED BY THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

JURISDICTION

Respondent concedes that appropriate jurisdiction to entertain this proceeding is vested in this court pursuant to 28 U.S.C. 1257.

STATEMENT OF THE CASE

Petitioners were each charged with and adjudged guilty, after jury verdicts of conviction in the County Judge's Court of Leon County, of having committed a "trespass with malicious and mischievous intent upon . . . property owned by Leon County, a political subdivision of the State of Florida . . . being located at the Leon County jail; contrary to Section 821.18, Florida Statutes" (R. 76).

Thereafter, the Circuit Court in and for Leon County, Florida, affirmed the judgments and sentences of conviction of the County Judge's Court in and for Leon County, Florida (R. 75-81).

Whereupon, a petition for a common law writ of certiorari was sought in the District Court of Appeal, First District of Florida. The District Court in a decision reported at 175 So. 2d 249 denied said petition as well as petition for rehearing.

STATEMENT OF THE FACTS

Rather than accept petitioners' "Summary of Evidence" purporting to follow the facts as set forth in the opinion of the Circuit Court, it is respectively submitted that a more nearly objective statement thereof may be found within the confines of the court's order (R. 75-81).

To the extent that said recitation may not be so considered and if it should become necessary in respondent's discussion of the argument, appropriate corrections and/or additions thereto will be made.

ARGUMENT SUMMARY

Petitioners have presented one question to the court based on the following parts, to-wit:

(1) That they were denied their rights under the Fourteenth Amendment to freedom of speech, assembly, and petition;

(2) That the doctrine of abatement is applicable to petitioners' convictions;

(3) That criminal statutes may not be used to violate minorities' constitutional rights;

(4) That petitioners' convictions are based on a total lack of relevant evidence.

With regard to part (1), respondent's position is that the cases of *Edwards v. South Carolina*, 1963, 372 U.S. 229, 83 S. Ct. 680, 9 L.Ed.2d 697, and the recent *Cox v. Louisiana* cases, 1965, 379 U.S. 536 and 559, 85 S.Ct. 453 and 476, 13 L.Ed.2d 471 and 487, relied on so heavily by petitioners are distinguishable and, therefore, not controlling upon the present case.

With regard to part (2), respondent urges that the doctrine of abatement with regard to the *1964 Civil Rights Act* is inapplicable to the present cause. Respondent submits that the convictions in this case are not part and parcel of any effort to seek to use places of public accommodation.

With regard to part (3), respondent will point out that Florida law was not used to violate petitioners' constitutional rights. Rather, the statute was applied to petioners in a fair and impartial manner.

Finally, in part (4), respondent urges that petitioners' convictions were based on adequate and competent evidence.

ARGUMENT

I

Petitioners' reliance on the cases of *Edwards v. South Carolina,* 1963, 372 U.S. 229, 83 S.Ct. 680, 9 L.Ed.2d 697 and the *Cox v. Louisiana* cases, 1965, 379 U.S. 536 and 559, 85 S.Ct. 453 and 476, 13 L.Ed.2d 471 and 487, to support a reversal does not appear well founded when the cases are closely compared with the present case.

The *Edwards* case involved a conviction in South Carolina for the common-law crime of breach of the peace. The petitioners were arrested while presenting a protest to the citizens of South Carolina, and the state legislature which was in session at the time. The protest took place on the state house grounds and law enforcement officers had advance knowledge that petitioners were coming. The protest consisted of carrying placards bearing various messages of protest against segregation. After a half hour of peaceable marching on the state house grounds petitioners were advised to disperse within fifteen minutes or be arrested. Petitioners responded by singing certain

patriotic and religious songs and listening to a "religious harangue" by one of their leaders. Arrest and conviction ensued and this court ruled that the convictions violated the defendants' rights of free speech, free assembly, and freedom to petition for redress of grievances.

In the *Cox* cases the petitioners were convicted for breach of the peace, obstructing public passages and picketing near a courthouse. It is clear that the students were harassed from the inception of their march in that their leader as well as the drivers of their buses were arrested. The police officers had similarly learned of the proposed demonstrations. Upon reaching the corner of the capitol grounds Cox told the authorities about the nature of the protest. When the group reached an area directly across the street from the courthouse Cox was again confronted and responded with a statement of their program from a prepared text.

In the case here under consideration the arrests were made of persons in the driveway abutting the county jail. The first witness produced by the defense admitted that she neither carried nor saw any signs or placards of protest (R. 60). She also admitted that she neither made nor heard any statements made to the officers of the purpose of the demonstration. Sheriff Joyce testified of a conversation with two men who seemed to be the leaders of the group. It was the sheriff's testimony that these participants stated that they had come to be arrested when the sheriff asked them to leave the jail property (R. 30-31).

Further, Deputy Dawkins testified of remarks made by the group to their leader that they had come to the jail the previous evening in an unsuccessful attempt to be arrested and had returned and were now demanding to be arrested (R. 46). Dawkins also related that a Reverend Evans had cautioned the demonstrators that they could not arrest themselves (R. 47). It is at this point that Dawkins testified concerning a service truck operator and that certain of the demonstrators were sitting behind and leaning against his truck (R. 48). He further testified that the driver after finishing his duties came to the door to leave and then did not leave (R. 48). Respondent will speculate along with petitioners that there is no indication whether the driver could have left had he walked out and asked the persons to move. The record is silent of any communications made by the group, either visual or oral, concerning the grievance sought to be redressed.

Petitioners have pointed to numerous areas of civil rights in which Florida has correctly been "brought in line" by court decision. Petitioners have also cited many facts both within and without the record concerning the conditions that existed in Tallahassee at the time of their arrests. Assuming everything said in this regard as true, one must wonder at just where it fits into the matters properly before this court for determination.

It is correct that the demonstrators carried no weapons. It is correct that the demonstrators exhibited no violence. It is correct that they did not disturb the citizenery of the City of Tallahassee—indeed the choice of the site for the demonstration made that virtually impossible. It

is here observed that there existed the great possibility that a number of the inmates of the jail proper were disturbed (R. 9) and that because of the demonstration the routine of the jail and the usual calm were as well disturbed.

It is difficult, if not impossible, to believe that they really meant to make an effective protest in the presence of no one but county jail inmates and the necessary penal personnel. Without pretending to advise petitioners of the locale they should have selected, it must be at once apparent that the choice they in fact made flies into the teeth of what they say was their announced purpose. Sheriff Joyce's testimony is replete with sworn assurances that no one on the public sidewalks or any other areas customarily used by the pedestrian public was either arrested or molested. Indeed, the very fact that the demonstrators were not arrested or harrassed on their way to the jail is at least evidence of the fact that the City of Tallahassee, the County of Leon and the State of Florida are well aware that public thoroughfares are free to be used by persons seeking to air grievances.

Petitioners take great delight in pointing out to this court that the respondent has said that they are not respectable. Respondent had always understood that one of the well-used and acceptable meanings of that word is "fair in size or quantity." Lest there be any further doubt at this juncture suffice, it to say that respondent was referring specifically to numbers and apologizes if any other meaning was gleaned from its use.

Petitioners take great care in explaining how the facts in *Edwards* and the *Cox* cases concerning granting and then revoking permission to protest relate to the facts in the present case. In both *Edwards* and *Cox* it is clear that the demonstrators were explicitly allowed to conduct their programs of protest and then said permission was withdrawn. In the case here under consideration the record reveals that the jailer met the unannounced crowd as it proceeded to within a foot of the jail steps. Jailer Dekle testified that no vehicles could have used the driveway to proceed directly in front of the jail entrance and he related that the entrance was primarily used by vehicles for bringing persons and supplies to jail (R. 20). This contention is not rebutted by the fact that Sheriff Joyce drove up because it was his testimony that he parked in the first parking area immediately off Gaines Street (R. 36). Further, it is clear that Sheriff Joyce gave no permission to the demonstrators to occupy the driveway. Petitioners contend in this regard that Sheriff Joyce gave an implied grant of permission and then revoked it. The record in this regard reveals that the sheriff upon arriving was busied with seeing about the security of the jail and that he then talked to two members of the group requesting them to disperse (R. 27-28). Respondent fails to gather any explicit or tacit permission from this conduct.

Respondent is puzzled as to just what the petitioners would have had the sheriff do when they refused to move after announcing it was their (the leaders') intention to be arrested.

Petitioners assert that the trespass statute, as construed and applied, violated their rights to freedom of expression

and equal protection and is, therefore, void for vagueness. As previously pointed out, it is clear that no person was arrested on the public sidewalks or any other areas customarily used by the pedestrian public. Further, there is no evidence that the sheriff had the unbridled discretion in the use of said statute. Finally, the record is silent of any communication to those at the jail concerning the purpose of their protest.

II

In their brief, petitioners admit that a jail is not a place of public accommodation but contend that the action at the jail "was part and parcel of an attempt to peacefully desegregate . . . theatres by picketing."

Also, in their Petition for a Writ of Certiorari their whole argument in this regard was that this case "really involves" demonstrations to seek admittance to places of public accommodation. However, a review of the record makes it clear that a trespass of the nature of the one at bar could be prosecuted today just as it was before the enactment of the *1964 Civil Rights Act.*

III

Petitioners have cited several cases that stand for the general proposition that petty criminal statutes cannot be used for the purpose of denying constitutional rights of minorities. However, there was no attempt either in the

petition or the brief to point out just how that proposition is applicable to the present case.

IV

Petitioners again contend that they were given an original grant of permission to demonstrate and that the sheriff's withdrawal was ineffective. The record reveals no grant or withdrawal of permission.

Petitioners also urge that the trespass was not "without just cause or excuse." The very fact that they selected the county property immediately adjacent to the jail proper clearly shows that their purpose was not simply to protest social wrongs or indeed laws which they felt were incorrect. When this is considered with the fact that certain of their leaders stated that their announced purpose was to be arrested it becomes clear that the act was committed without just cause or excuse.

The fact that the provocations may have been themselves constitutionally unlawful cannot justify unlawful means for their resolution. Both types of conduct are wrong and obviously two wrongs cannot make a right.

Respondent concedes it would be preferable to have someone or some group of persons able to state with some particularity and certainty that each of the petitioners not only did trespass, but were arrested therefor. This would seldom, if ever, be possible when a group as large as this is involved. However, it may be fairly deduced from the record in this case that on the scene at the time

in question all the demonstrators who were on county jail property adjacent to the jail proper were ringed with police officers and that from announcement by the sheriff that they were under arrest after he had ordered them to leave, the ring of police officers simply closed around them. Within the persons arrested the present petitioners could have been and were compared to the arrest records and so identified as co-perpetrators of the trespass in question.

Quite apart from the above and to the extent that petitioners urge that public property is at their unbridled disposal as a forum to air grievances, it is respectfully submitted that the federal law specifically prohibits such activity in and about the region of the Supreme Court of the United States. Section 13k of Title 40 of United States Code reads as follows:

> "§ 13k. *Same; parades or assemblages; display of flags*
> It shall be unlawful to parade, stand, or move in processions or assemblages in the Supreme Court Building or grounds, or to display therein any flag, banner, or device designed or adapted to bring into public notice any party, organization, or movement. Aug. 18, 1949, c. 479, § 6, 63 Stat. 617"

To like general effect is Section 401 of Title 18 of the United States Code which addresses itself to the misbehavior of any person in the presence of a court of the

United States or so near thereto as to obstruct the administration of justice.

By analogy, may it not be fairly concluded that if the quiet processes of federal judicial labors may not be abridged by activities such as those involved here, surely the supercharged atmosphere of a county penal institution should remain at least as insulated therefrom. We submit that objectivity commands an affirmative answer.

CONCLUSION

Wherefore, it is concluded that not only was there no violation of free speech, assembly, petition, due process of law and equal protection of the laws assured by the Fourteenth Amendment, but that in fact the issues raised by the petition for writ of certiorari did not lie within the broad scope of reversible error.

WHEREFORE, this court is respectfully requested to quash the petition for writ of certiorari heretofore granted and affirm the judgment and sentence below.

Respectfully submitted,

EARL FAIRCLOTH
Attorney General

WILLIAM D. ROTH
Assistant Attorney General

Counsel for Respondent

PROOF OF SERVICE

I HEREBY CERTIFY that copies of the above and foregoing brief of respondent have been forwarded by mail this _____ day of September, 1966, to the following as members of counsel for petitioners:

Honorable Richard Yale Feder, 250 NE 17 Terrace, Miami, Florida, 33131, Honorable Tobias Simmon, c/o Florida Civil Liberties Union, 223 SE 1st Street, Miami, Florida, 33131, Honorable Herbert Heiken, c/o Florida Civil Liberties Union, 223 SE 1st Street, Miami, Florida, 33131, Honorable Joseph C. Segor, 311 Lincoln Road, Miami Beach, Florida, 33139, Honorable Irma Robbins Feder, 110 N. Hibiscus Drive, Miami Beach, Florida, 33139.

Of Counsel for Respondent